

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

JAMARIO A. MITCHELL,

Petitioner,

Civil Case No. 04-73559

HONORABLE PATRICK J. DUGGAN

v.

JERI-ANN SHERRY,

Respondent,

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**ORDER DENYING CERTIFICATE OF APPEALABILITY**

At a session of said Court, held in the U.S.  
District Courthouse, Eastern District  
of Michigan, on March 15, 2006.

PRESENT: THE HONORABLE PATRICK J. DUGGAN  
U.S. DISTRICT COURT JUDGE

Petitioner Jamario A. Mitchell filed a *pro se* petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, which this Court subsequently denied. Petitioner seeks to appeal the Court's decision with respect to the third claim in his petition only<sup>1</sup> and therefore requests a certificate of appealability from this Court. 28 U.S.C. § 2253.

Section 2253 provides that a certificate of appealability may issue only if a petitioner makes a substantial showing of the denial of a constitutional right. 28 U.S.C. §

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<sup>1</sup>While Petitioner plainly states that he only is seeking a certificate of appealability with respect to his third claim, *see* mot. ¶ 2, the arguments in his motion are more relevant to claims one and two in his petition— that there was insufficient evidence to convict him of felony murder. To the extent Petitioner seeks to challenge the Court's decision with respect to those claims, the Court does not believe that a certificate of appealability should issue.

2253(c)(2). As the Supreme Court has stated:

“[T]he petitioner need not show that he should prevail on the merits. He has already failed in that endeavor. Rather, he must demonstrate that the issues are debatable among jurists of reason; that a court could resolve the issues [in a different manner] or that the questions are ‘adequate to deserve encouragement to proceed further.’”

*Barefoot v. Estelle*, 463 U.S. 880, 893 n.4, 103 S. Ct. 3383, 3394 n.4 (1983)(quoting *Gordon v. Willis*, 516 F. Supp. 911, 913 (N.D. Ga. 1980)). As the Supreme Court more recently stated, when a district court denies a habeas petition on the merits of the claims, a certificate may issue if the petitioner demonstrates that reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 520 U.S. 473, 484, 120 S. Ct. 1595, 1604 (2000).

This Court dismissed Petitioner’s application for a writ of habeas on its merits. In his third claim, Petitioner claimed that his conviction of felony murder must be reduced to second-degree murder because the underlying felony, assault with intent to rob armed, is not one of the enumerated felonies within Michigan’s felony-murder statute. The Court found no merit to Petitioner’s argument, concluding that it was bound by the Michigan Court of Appeals’ interpretation of the State’s statute announced on direct appeal in Petitioner’s case. See 2/9/06 Op. and Order at 14 (quoting *Bradshaw v. Richey*, — U.S. —, 126 S. Ct. 602, 604 (2005)). The Court concludes that reasonable jurists would not find its assessment of those claims debatable or wrong.

Accordingly, the Court holds that Petitioner is not entitled to a certificate of appealability and DENIES the request.

**SO ORDERED.**

s/PATRICK J. DUGGAN  
UNITED STATES DISTRICT JUDGE

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